

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #09-xxx(E)

DIGEST

Temporarily amends provisions at 327 IAC 5-4-3, 327 IAC 15-15-1, 327 IAC 15-15-2, 327 IAC 15-15-9, 327 IAC 15-15-11, and 327 IAC 15-15-12. Authority: IC 4-22-2-37.1(a)(13). Effective February 27, 2009.

DRAFT RULE—*Courtesy Copy**

**This version shows what is being amended in the emergency rule through the use of bold and strikeout.*

327 IAC 5-4-3 Concentrated animal feeding operations

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) Concentrated animal feeding operations or CAFOs **that discharge or propose to discharge** are point sources that require NPDES permits for discharges or ~~potential~~ **proposed** discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all:

- (1) animals in confinement at the operation; and
- (2) manure, litter, and process wastewater generated by those animals or the production of those animals;

regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage **in accordance with Section 2(b) of this document*** under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.

5-4-3(i) The deadlines to either seek coverage under an individual NPDES permit under this rule or under a general NPDES permit under 327 IAC 15-15 are as follows:

- (1) Operations defined as CAFOs before April 14, 2003, must do the following:
 - (A) Seek coverage as of April 14, 2003.
 - (B) Comply with all applicable requirements at the time of coverage.
- (2) The following operations **that discharge or propose to discharge**, which were defined as CAFOs as of April 14, 2003, but were not defined as CAFOs before that date, must seek coverage not later than February 27, 2009:
 - (A) CAFOs with at least one thousand (1,000) heifers.
 - (B) CAFOs with at least ten thousand (10,000) swine weighing less than fifty-five (55) pounds.
 - (C) CAFOs with at least:
 - (i) one hundred twenty-five thousand (125,000) chickens, other than laying hens; or

* references to "this document" are for the emergency rule only

(ii) eighty-two thousand (82,000) laying hens;
if the CAFO uses other than a liquid manure handling system.

(3) Operations **that discharge or propose to discharge** defined as CAFOs as of April 14, 2003, that were not defined as CAFOs before April 14, 2003, because the operation has not discharged except in the event of a twenty-five (25) year, twenty-four (24) hour rainfall event must do the following:

(A) Maintain a CFO approval under 327 IAC 16 until:

- (i) an individual NPDES permit is obtained; or
- (ii) the operation receives general permit coverage under 327 IAC 15-15.

(B) ~~Certify~~ **Previously certified** the following to the commissioner in writing: ~~within ninety (90) days of the effective date of this rule:~~

- (i) The AFO was not required to apply for a permit under this article.
- (ii) A discharge has not occurred from the AFO.
- (iii) The operation was constructed and is at all times maintained to prevent a discharge during dry weather and wet weather up to and including a twenty-five (25) year, twenty-four (24) hour rainfall event.

(C) Sign the certification in accordance with 327 IAC 15-15-5(c).

(D) Seek permit coverage under an individual permit under this rule or a general NPDES permit under 327 IAC 15-15 by February 27, 2009.

(E) Not discharge manure, litter, or process wastewater to the waters of the state. If an AFO has a discharge after submitting a certification to the commissioner, the AFO must do the following:

(i) ~~Notify the department of the discharge within twenty-four (24) hours of the discharge.~~ **Immediately notify the department of the discharge.**

(ii) Seek coverage within thirty (30) days of the discharge under either of the following:

(AA) An individual NPDES permit under this rule.

(BB) A general NPDES permit under 327 IAC 15-15.

(4) Any operation that has a discharge after submitting the certification under this subsection to the commissioner shall do the following:

(A) Immediately notify the department of the discharge.

(B) Seek coverage within thirty (30) days of the discharge under either of the following:

(i) An individual NPDES permit under this rule.

(ii) The NPDES general permit rule under 327 IAC 15-15.

(5) For operations that are newly constructed or that make changes, such that the operation becomes a CAFO as defined under this rule, after April 14, 2003, but are not new sources as defined by 327 IAC 15-15-3(4), one (1) of the following:

(A) For newly constructed operations not subject to effluent limitations guidelines in 40 CFR 412, effective April 14, 2003, one hundred eighty (180) days before the commencement of operations.

(B) For other operations, not later than ninety (90) days after becoming a CAFO as defined under this rule.

However, if an operational change that makes the operation a CAFO would not have made the operation CAFO before April 14, 2003, the operation has until February 27, 2009, or ninety (90) days from becoming defined as a CAFO, whichever is later, to seek coverage.

(6) New sources, as defined by 327 IAC 15-15-3(4), must seek permit coverage at least one hundred eighty (180) days before the CAFO is expected to commence operation. A new CAFO may commence operation at the time that the facility obtains an NPDES permit.

(7) Operations designated as a CAFO must seek permit coverage within ninety (90) days of being designated.

327 IAC 15-15-1 Purpose and effect

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

(c) For discharges and ~~potential~~ **proposed** discharges of manure, litter, process wastewater, and storm water associated with regulated activity, compliance with this article and general permit rule constitutes compliance with Sections 301, 302, 306, 307, 318, 403, and 405(a) and (b) ~~[405(b)]~~ of the Clean Water Act and state law in reference to discharges and ~~potential~~ **proposed** discharges of manure, litter, process wastewater, and storm water.

327 IAC 15-15-2 Applicability and permit boundary

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10; IC 13-30-3

Sec. 2. (a) This rule applies to all CAFOs **that discharge or propose to discharge**, or AFOs designated as CAFOs under 327 IAC 5-4-3(c) or 40 CFR 122.23(c), effective April 14, 2003, or AFOs electing to be subject to this rule, located within the boundaries of the state of Indiana. All CAFO owners or operators must seek permit coverage **in accordance with the deadlines provided in Section 2(b) of this document** ~~under this rule~~ or through an individual NPDES permit except as provided in ~~subsection (f)~~ **327 IAC 15-15-2(f)**.

327 IAC 15-15-9 General conditions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-11-2-40.8; IC 13-18-10

Sec. 9. (a) The commissioner may require any person, with a facility that has an existing discharge or ~~the potential for a~~ **proposes to** discharge, and is subject to the requirements of this article, to apply for and obtain an individual NPDES permit if one (1) of the following occurs:

- (1) The applicable requirements contained in this article are not adequate to ensure compliance with:
 - (A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or
 - (B) the provisions that implement water quality standards contained in 327 IAC 5.
- (2) The owner, operator, or facility is not in compliance with the terms and conditions of the general permit rule.
- (3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source.
- (4) Effluent limitations guidelines that are more stringent than the requirements in the general permit rule are subsequently promulgated for point sources regulated by the general permit rule.
- (5) A water quality management plan containing more stringent requirements applicable to such point source is approved.
- (6) Circumstances have changed since the activity regulated under this article began so that the discharge is no longer appropriately controlled under the general permit rule, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.
- (7) The owner or operator has commenced construction, as defined at IC 13-11-2-40.8, before receiving written confirmation from the department that the construction plan is consistent with the general permit.
- (8) The facility has an increased potential to discharge because of the proximity to waters of the state and conditions exist at the site that may not prevent discharges to waters of the state without the imposition of additional requirements not contained in this rule.
- (9) The owner or operator has knowingly or intentionally submitted false information to the department as part of the NOI or the false information is in the required operating records under this rule.
- (10) The owner or operator has failed to comply with a specific general permit requirement relating to protection of water quality on at least three (3) separate occasions within the preceding five (5) years and has been notified of the violations at least twice by the department.
- (11) The facility has had a reportable spill pursuant to 327 IAC 2-6.1 to the waters of the state within the five (5) years prior to the NOI submittal.
- (12) The land application areas of the operation are closer than the setback distances allowed under section 12 of this rule.

327 IAC 15-15-11 Soil conservation practice plan

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 11. (a) Except as provided in ~~subsection (b)~~ **327 IAC 15-15-11(b)**, any person with a facility subject to this rule **that discharges or proposes to discharge** must develop and implement a soil conservation practice plan for land application areas by February 27, 2009. The following milestones shall be met for

the development and implementation of the plan by the owner or operator of the CAFO who:

- (1) Must identify the person who will develop the soil conservation practice plan by December 31, 2004.
- (2) Must have completed the soil conservation practice plan by February 27, 2009.
- (3) Must have implemented the soil conservation practice plan by February 27, 2009.
- (4) Shall report progress toward meeting each milestone in this section in the annual report required under ~~section 9(b) of this rule~~ **327 IAC 15-15-9(b)**.

327 IAC 15-15-12 Nutrient management requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

(d) CAFOs that are not new sources **and that discharge or propose to discharge** must adjust land application rates to conform with the NRCS 590 standard **dated July 2001**, by February 27, 2009.